

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN K. FREEMAN,

Case No. 3:22-cv-00334-ART-CSD

Plaintiff,

ORDER

v.

WASHOE COUNTY DETENTION
FACILITY, et al.,

Defendants.

Plaintiff John K. Freeman brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Washoe County Detention Facility. (ECF No. 1-1). On October 6, 2022, this Court ordered Freeman to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before November 7, 2022. (ECF No. 6). The Court warned Freeman that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3). That deadline expired and Freeman did not file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee. And the Court's mail to Freeman has been returned as undeliverable. (ECF No. 7).

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)

(dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of Freeman's claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

The fifth factor requires the Court to consider whether less drastic alternatives can be used to correct the party's failure that brought about the Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but must explore possible and meaningful alternatives.”

1 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action
2 cannot realistically proceed until and unless Freeman either files a fully complete
3 application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil
4 action, the only alternative is to enter a second order setting another deadline.
5 But the reality of repeating an ignored order is that it often only delays the
6 inevitable and squanders the Court's finite resources. And because the Court's
7 mail to Freeman has been returned as undeliverable, the chance that the order
8 will reach him is low. Setting a second deadline is not a meaningful alternative
9 given these circumstances. So the fifth factor favors dismissal.

10 **II. CONCLUSION**

11 Having thoroughly considered these dismissal factors, the Court finds that
12 they weigh in favor of dismissal. It is therefore ordered that this action is
13 dismissed without prejudice based on Plaintiff John Freeman's failure to file a
14 fully complete application to proceed *in forma pauperis* or pay the full \$402 filing
15 fee in compliance with this Court's October 6, 2022, order. The Clerk of Court is
16 directed to enter judgment accordingly and close this case. No other documents
17 may be filed in this now-closed case. If Freeman wishes to pursue his claims, he
18 must file a complaint in a new case.

19
20 DATED THIS 22nd day of November 2022.

21 

22
23 ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE